

REMARKS

Reconsideration of this application, as presently amended, is respectfully requested. Claims 95-102 and 104-127 and 130 are now pending in this application, claim 103 having been cancelled by the present Amendment.

The claims have been amended, pursuant to several telephonic interviews with the Examiner, Mr. Nathan Brown, to place this application in condition for allowance. During several telephonic interviews with the Mr. Brown conducted after receiving the Advisory Action dated February 18, 2009, the Examiner agreed that all outstanding rejections were overcome by the response filed on February 11, 2009 and the claims would be put into condition for allowance by the present Amendments. The substance of those telephonic interviews is discussed below.

Upon receiving the Advisory Action dated February 18, 2009, the undersigned applicants' representative contacted the Examiner to obtain clarification of the Advisory Action. During several telephonic interviews with Mr. Brown conducted on February 20, 2009; March 4, 2009 and March 17, 2009, agreement with respect to the following issues was reached:

- (I) The Examiner agreed that the rejections under 35 U.S.C. §112, first paragraph, and 35 U.S.C. §101 set forth in the Office Action mailed October 17, 2008 are overcome by the response filed on February 11, 2009. It is also noted that during a telephonic interview with the Examiner's supervisor, Mr. David Vincent, conducted on February 5, 2009, Mr. Vincent agreed that the arguments presented in the response filed on February 11, 2009 overcome the

rejections under 35 U.S.C. §112, first paragraph, and 35 U.S.C. §101 set forth in the Office Action mailed October 17, 2008.

- (II) The Examiner agreed that the comments set forth in the Advisory Action dated February 18, 2009 regarding why the response filed on February 11, 2009 does not place this application in condition for allowance (i.e., "As every real-world entity and physically transformative process has a physical structure, claims 95-127 and 130 seek to foreclose from others the use of applicants' genetic algorithm (i.e., mathematical algorithm) and/or graphical user interfaces and/or computer systems having a user interface for every 'substantial practical application' of an idea (the mathematics of the genetic algorithm.)" constitute a new ground of rejection under 35 U.S.C. §101. More specifically, the Examiner agreed that the 35 U.S.C. §101 rejection set forth in the final Office Action dated October 17, 2008 was a rejection based on *lack of utility* under §101, whereas the reasons set forth in the Advisory Action regarding why the arguments presented in the response filed on February 11, 2009 allegedly do not place this application in condition for allowance were based on *lack of statutory subject matter* under §101.

- (III) Finally, the Examiner agreed that the amendments submitted herewith place this application in condition for allowance. More specifically, the Examiner agreed that because all rejections set forth in the final Office Action dated October 17, 2008 were overcome by the response filed on February 11, 2009

and because the current amendments address the Examiner's concerns articulated in the Advisory Action dated February 18, 2009, the amendments submitted herewith place this application in condition for allowance.

Claim Rejections – 35 U.S.C. §112, first paragraph

Claims 95-127 and 130 were rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. Claims 95-127 and 130 were rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the enablement requirement.

As noted above, the Examiner and the Examiner's supervisor agreed that the arguments presented in the response filed on February 11, 2009 overcome these rejections.

Claim Rejection- 35 U.S.C. §101

Claims 95-127 and 130 were rejected under 35 U.S.C. §101 for allegedly lacking patentable utility.

As noted above, the Examiner and the Examiner's supervisor agreed that the arguments presented in the response filed on February 11, 2009 overcome this rejection.

CONCLUSION

In view of the foregoing, it is submitted that all pending claims are in condition for allowance. An indication of allowability of all pending claims is earnestly solicited.

Application No.: 10/649,936
Art Unit: 2129

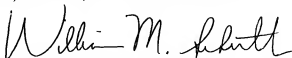
Amendment under 37 C.F.R. §1.116
Attorney Docket No.: 991334A

If the Examiner believes that there are issues remaining to be resolved in this application, the Examiner is invited to contact the undersigned attorney at the telephone number indicated below to arrange for an interview to expedite and complete prosecution of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read "William M. Schertler". The signature is fluid and cursive, with the first name "William" and middle initial "M." being more legible than the last name "Schertler".

William M. Schertler
Attorney for Applicants
Registration No. 35,348
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

WMS/dlt